

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

TINA Y. W.,

Plaintiff,

v.

No. 3:19-CV-00639-S-BT

NANCY A. BERRYHILL,
Acting Commissioner of the
Social Security Administration,

Defendant.

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Tina Y. W. filed an application to proceed *in forma pauperis* (ECF No. 5) in this case seeking judicial review of a final adverse decision of the Commissioner of Social Security under 42 U.S.C. § 405(g). For the reasons stated, the application should be DENIED.

A district court may permit a person to commence a civil action without prepaying fees or costs, if she “makes an affidavit that [s]he is unable to pay such costs or give security therefor.” 28 U.S.C. § 1915(a)(1). The court must examine the applicant’s financial condition to determine whether paying filing fees would cause an undue financial hardship. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). A “court enjoys limited discretion to grant or deny *in forma pauperis* status based on the financial resources of the litigant.” *Moorish Sci. Temple of Am. v. J.P.*

Morgan Chase Bank, N.A., 2015 WL 233324, at *2 (N.D. Tex. Jan. 16, 2015) (citing *Adkins v. E.I. Du Pont De Nemours & Co.*, 335 U.S. 331, 337 (1948)).

Although Plaintiff is unemployed, she represents that her spouse's average monthly income is \$2,762.00. Their monthly expenses total \$3,280.00. Additionally, Plaintiff and her spouse own a home valued at \$135,000.00 and two vehicles valued at \$30,000.00 and \$5,000.00. In her application, Plaintiff explains that she is unable to pay the filing fee because she and her spouse "are on a fixed and tight income," take care of their two children aged 18 and 21, and had to repair their plumbing line and truck's transmission. While the Court understands that unforeseen expenses are burdensome, it finds that Plaintiff has adequate assets to pay the \$400.00 filing fee and other costs of this suit.

RECOMMENDATION

The District Court should DENY Plaintiff's application to proceed *in forma pauperis* (ECF No. 5) and should order Plaintiff to pay the statutory filing fee within 20 days of the District Court's order accepting this recommendation. If Plaintiff fails to do so, this case should be dismissed without further notice.

SO RECOMMENDED.

March 27, 2019.



REBECCA RUTHERFORD
UNITED STATES MAGISTRATE JUDGE

**INSTRUCTIONS FOR SERVICE AND
NOTICE OF RIGHT TO APPEAL/OBJECT**

A copy of this report and recommendation shall be served on all parties in the manner provided by law. Any party who objects to any part of this report and recommendation must file specific written objections within 14 days after being served with a copy. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b). To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's report and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific. Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district court, except upon grounds of plain error. *See Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996).